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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,184	05/04/2006	Tadahiro Ohmi	289955US26X PCT	8419
22850 7590 11/17/2008 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER DHINGRA, RAKESH KUMAR	
			ART UNIT 1792	PAPER NUMBER
			NOTIFICATION DATE 11/17/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/578,184	Applicant(s) OHMI ET AL.	
	Examiner RAKESH K. DHINGRA	Art Unit 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/06/06/08</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmi et al (US PG PUB 2003/0178144).

Regarding Claims 1, 2: Ohmi et al teach a plasma apparatus comprising:
a processing vessel 11 having a holder 13 holding a substrate 12 to be processed;
a microwave antenna 20 provided on the processing vessel so as to oppose the substrate to be processed; and
a processing gas supply part 31 provided between the substrate to be processed on the holder 13 and the microwave antenna 20 so as to oppose the substrate to be processed,

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characterized in that the process gas supply part 31 has a plurality of first openings 31A through which plasma formed in the processing vessel passes, a process gas channel 31B connectable to a process gas source, a plurality of second openings 31D communicating with the process gas channel. Ohmi et al also teach a cooling medium channel 31e in the processing gas supplying part 32 through which a coolant flows (e.g. Figs. 3 -5 and para. 0049-0051, 0062-0070).

Further, claim limitations wherein the cooling medium includes a cooling gas and mist, and the cooling medium includes SF₆ pertain to contents of apparatus during intended operation of the apparatus and is not considered to add patentable weight.

In this regard courts have ruled:

Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969).

Claims 3, 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmi et al (US PG PUB 2003/0178144) as applied to claims 1 and 2, in view of Hoffman et al (US 2005/0001556).

Regarding Claims 3, 4: Ohmi et al teach all limitations of the claim including process gas introducing part with a cooling medium channel.

Ohmi et al do not teach a cooling medium circulator for circulating the cooling medium.

However use of a heat exchanger (circulator) for circulating the cooling medium is known in the art as per reference cited hereunder.

Hoffman et al teach a plasma apparatus with a process gas distribution part 125 with cooling medium channel 1522 and a circulator 1524 for circulating a cooling medium. Hoffman et al further

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teach that the circulator 1524 can cool or heat the cooling medium (e.g. Figs. 29, 30, 31 and para. 0149).

Therefore it would have been obvious to one of ordinary skills in the art at the time of the invention to provide a circulator for circulating a cooling medium as taught by Hoffman et al in the apparatus of Ohmi et al to enable circulate the coolant with controlled temperature and control temperature of process gas supplying part.

Claims 5, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmi et al (US PG PUB 2003/0178144) in view of Hoffman et al (US 2005/0001556) as applied to claims 3, 4 and further in view of Hongoh (JP 2000-277508 - equivalent to US 6,736,930 which is referred to herein after).

Regarding Claims 5, 6: Ohmi et al in view of Hoffman et al teach all limitations of the claim including a cooling medium circulator.

Ohmi et al in view of Hoffman et al do not teach the cooling medium circulator has cooling medium control means for controlling an amount of cooling of the process gas supply part by the cooling medium based on temperature measured by temperature measurement means provided in the process gas supply part.

Applicant has invoked 35 USC 112, 6th paragraph in respect of claim limitations –“ cooling medium control means” for which the applicant’s disclosed structure includes a mass flow controller /variable conductance valve 55 (Fig. 7 and page 23, line 10 to page 25, line 15). Further, regarding claim limitation “temperature measurement means” 35 USC 112, 6th paragraph is not considered to b

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invoked since applicant has not disclosed any specific structure for temperature measurement means 57.

Hongoh teaches a plasma apparatus comprising a temperature control unit 30 that includes mass flow controller and controls temperature of cooling water based upon temperature measured by a temperature sensor 36 (e.g. Figs. 1, 2 and col. 7, lines 10-50). Though Hongoh do not explicitly teach that the temperature control means controls temperature of process gas supplying device it would be obvious to provide the same for obtaining temperature control of process gas supplying part based on the temperature measured by the temperature measurement means.

Therefore it would have been obvious to one of ordinary skills in the art at the time of the invention to provide a temperature control means as taught by Hongoh in the apparatus of Ohmi et al in view of Hoffman et al to enable control temperature of the process gas supplying part.

Claims 7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmi et al (US PG PUB 2003/0178144) in view of Hoffman et al (US 2005/0001556) and Hongoh (JP 2000-277508 - equivalent to US 6,736,930 which is referred to herein after) as applied to claims 5, 6 and further in view of Paganessi (US 5,660,047).

Regarding Claims 7, 8: Ohmi et al in view of Hoffman et al and Hongoh teach all limitations of the claim except the cooling medium control means is a pressure control means for controlling pressure of the cooling medium.

Applicant has invoked 35 USC 112, 6th paragraph in respect of claim limitations –“ cooling medium control means” for which the applicant’s disclosed structure includes a mass flow controller /variable conductance valve 55 (Fig. 7 and page 23, line 10 to page 25, line 15).

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Paganessi teaches a plasma apparatus comprising a cooling control means that includes pressure control means 40 that controls 14, 16, 24, 26 etc based on input from pressure sensors P and temperature sensors T (e.g. Fig. 1 and col. 4, lines 46-55). Though Paganessi do not explicitly teach that the temperature control means controls temperature of process gas supplying device it would be obvious to provide the same for obtaining temperature control of process gas supplying part based on the temperature measured by the temperature measurement means.

Therefore it would have been obvious to one of ordinary skills in the art at the time of the invention to provide pressure control as the cooling medium control means as taught by Paganessi in the apparatus of Ohmi et al in view of Hoffman et al and Hongoh as a known alternate means to control temperature of the process gas supplying part.

In this regard courts have ruled:

The selection of a known material based on its suitability for its intended use is prima facie obviousness. *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945).

Regarding Claim 8: Claim limitation pertaining to pressure of the cooling medium channel being set to 0.2 – 1 MPa is a functional limitation and since the apparatus of prior art meets the structural limitations of the claim, the same is considered capable of meeting the functional limitation.

In this regard courts have ruled:

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). Apparatus claims cover what a device is, not what a device does *Hewlett-Packard Co. V. Bausch & Lomb Inc.*, 15USPQ2d 1525, 1528 (Fed. Cir. 1990).

Regarding Claims 9, 10: Claim limitations wherein the cooling medium includes a cooling gas and mist, and the cooling medium includes SF₆ pertain to contents of apparatus during intended operation of the apparatus and is not considered to add patentable weight.

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In this regard courts have ruled:

Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAKESH K. DHINGRA whose telephone number is (571)272-5959. The examiner can normally be reached on 8:30 -6:00 (Monday - Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Parviz Hassanzadeh can be reached on (571)-272-1435. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rakesh K Dhingra/
Examiner, Art Unit 1792

/K. M./

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Primary Examiner, Art Unit 1792